

Pursuant to Federal Rule of Civil Procedure 26 and this Court's Local Rules, in order to protect the confidentiality of, and the rights to, information and documents developed and disclosed in connection with this litigation, and to facilitate discovery by and among the parties to this action and from third parties, the parties to this Stipulation (the "Parties") hereby stipulate and request the Court to order that the following Order for the Protection of Confidential and Proprietary Information and Material ("Order") be issued in this action:

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation would be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords extends only to the limited information or items that are entitled under the applicable legal principles to treatment as confidential. The parties further acknowledge, as set forth in Section 10 below, that this Stipulated Protective Order creates no entitlement to file confidential information under seal. Civil Local Rule 79-5 sets forth the procedures that must be followed and reflects the standards that will be applied when a Party seeks permission from the Court to file material under seal.

2. DEFINITIONS

2.1 Party: any party to this action, including all of its officers, directors, employees, consultants, retained experts, and outside counsel (and their support staff).

2.2 Disclosure or Discovery Material: all items or information, regardless of the medium or manner generated, stored, or maintained (including, among other things, testimony, transcripts, or tangible things) that are produced or generated in disclosures or responses to discovery in this matter.

2.3 "Confidential" Information or Items: information (regardless of how generated, stored or maintained) or tangible things that qualify for protection under standards

developed under F.R.Civ.P. 26(c). “Confidential” material shall be interpreted to encompass any confidential, proprietary or otherwise sensitive information as to which the Designating Party customarily takes steps to limit or prevent its disclosure or misuse, including trade secrets as defined under California Civil Code § 3426.1(d) and applicable case law; other confidential and proprietary technical, research, or development information; commercial, financial, budgeting and/or accounting information; information about existing and potential customers, marketing and branding studies, performance and projections, business strategies, decisions and/or negotiations, and/or pricing; and confidential and proprietary information about affiliates, parents, subsidiaries, and third parties with whom the parties to this action have had business relationships. A party or third party may designate as “CONFIDENTIAL” any non-public material that it supplies, discloses, produces, files or uses in connection with this proceeding and that it does not wish to be disclosed to the public.

2.4 “Highly Confidential – Attorneys’ Eyes Only” Information or Items: extremely sensitive “Confidential” material whose disclosure to another Party or non-party would create extreme substantial risk of serious injury that could not be avoided by less restrictive means. A party or third party may designate as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” any non-public material that it supplies, discloses, produces or uses in connection with this proceeding when it has a good-faith belief that the disclosure of such material to the adverse party may have a material adverse effect on the Designating Party.

2.5 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

2.6 Producing Party: a Party or non-party that produces Disclosure or Discovery Material in this action.

2.7 Designating Party: a Party or non-party that designates information or items that it produces in disclosures or in responses to discovery as “Confidential” or “Highly Confidential – Attorneys’ Eyes Only.”

2.8 Protected Material: any Disclosure or Discovery Material that is designated as “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.”

1 2.9 Outside Counsel: attorneys who are not employees of a Party but who are
2 retained to represent or advise a Party in this action.

3 2.10 House Counsel: attorneys who are employees of a Party.

4 2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as well
5 as their support staffs).

6 2.12 Expert: a person with specialized knowledge or experience in a matter
7 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert
8 witness or as a consultant in this action and who is not a past or current employee of a Party or of
9 a competitor of a Party and who, at the time of retention, is not anticipated to become an
10 employee of a Party or a competitor of a Party. This definition includes a professional jury or
11 trial consultant retained in connection with this litigation.

12 2.13 Professional Vendors: persons or entities that provide litigation support
13 services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations;
14 organizing, storing, retrieving data in any form or medium; etc.) and their employees and
15 subcontractors.

16 3. SCOPE

17 The protections conferred by this Stipulation and Order cover not only Protected Material
18 (as defined above), but also any information copied or extracted therefrom, as well as all copies,
19 excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by
20 parties or counsel to or in court or in other settings that might reveal Protected Material.

21 4. DURATION

22 Even after the termination of this litigation, the confidentiality obligations imposed by
23 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court
24 order otherwise directs.

25 5. DESIGNATING PROTECTED MATERIAL

26 5.1 Exercise of Restraint and Care in Designating Material for Protection.

27 Each Party or non-party that designates information or items for protection under this Order must
28 take care to limit any such designation to specific material that qualifies under the appropriate

standards. A Designating Party must take care to designate for protection only those parts of material, documents, items, or oral or written communications that qualify – so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified, or that have been made for an improper purpose (e.g., to unnecessarily encumber or retard the case development process, or to impose unnecessary expenses and burdens on other parties), expose the Designating Party to sanctions.

If it comes to a Party's or a non-party's attention that information or items that it designated for protection do not qualify for protection at all, or do not qualify for the level of protection initially asserted, that Party or non-party must promptly notify all other parties that it is withdrawing the mistaken designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.

Designation in conformity with this Order requires:

(a) for information in documentary form (apart from transcripts of depositions or other pretrial or trial proceedings) that the Producing Party affix the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" at the top of each page that contains protected material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each portion, the level of protection being asserted (either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY").

A Party or non-party that makes original documents or materials available for inspection need not designate them for protection until after the inspecting Party has indicated which material it would like copied and produced. During the inspection and before the

1 designation, all of the material made available for inspection shall be deemed “HIGHLY
 2 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified
 3 the documents it wants copied and produced, the Producing Party must determine which
 4 documents, or portions thereof, qualify for protection under this Order, then, before producing
 5 the specified documents, the Producing Party must affix the appropriate legend
 6 (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) upon
 7 each page that contains Protected Material. If only a portion or portions of the material on a
 8 page qualifies for protection, the Producing Party also must clearly identify the protected
 9 portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each
 10 portion, the level of protection being asserted (either “CONFIDENTIAL” or “HIGHLY
 11 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”).

12 (b) for testimony given in deposition or in other pretrial or trial
 13 proceedings, that the Party or non-party offering or sponsoring the testimony identify on the
 14 record, before the close of the deposition, hearing, or other proceeding, all protected testimony,
 15 and further specify any portions of the testimony that qualify as “HIGHLY CONFIDENTIAL –
 16 ATTORNEYS’ EYES ONLY.” When it is impractical to identify separately each portion of
 17 testimony that is entitled to protection, and when it appears that substantial portions of the
 18 testimony may qualify for protection, the Party or non-party that sponsors, offers, or gives the
 19 testimony may invoke on the record (before the deposition or proceeding is concluded) a right to
 20 have up to 20 days to identify the specific portions of the testimony as to which protection is
 21 sought and to specify the level of protection being asserted (“CONFIDENTIAL” or “HIGHLY
 22 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”). Only those portions of the testimony that
 23 are appropriately designated for protection within the 20 days shall be covered by the provisions
 24 of this Stipulated Protective Order.

25 Transcript pages containing Protected Material must be separately bound by the
 26 court reporter, who must affix to the top of each such page the legend “CONFIDENTIAL” or
 27 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” as instructed by the Party or
 28 non-party offering or sponsoring the witness or presenting the testimony.

(c) for information produced in some form other than documentary, and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information or item is stored the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only portions of the information or items warrant protection, the Producing Party, to the extent practicable, shall identify the protected portions, specifying whether they qualify as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

(d) for information obtained from a Third Party: If a Party serves a Third Party with a subpoena or a public records act request, it shall also serve a copy of this Order along with said subpoena/public records act request. Said Third Party may designate any item or document as “CONFIDENTIAL” and/or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to the terms of this Order. Additionally, any items or documents received from that Third Party shall be treated as having been designated “HIGHLY CONFIDENTIAL – ATTORNEYS EYES ONLY” for a period of thirty days, during which time each party shall have an opportunity to review said items and/or documents and designate same as “CONFIDENTIAL” and/or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”. If the parties dispute the designation of any document or item, the designation affording the highest level of protection shall remain in place until resolution of the issue, whether by agreement of the Parties or by court Order.

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” does not, standing alone, waive the Designating Party’s right to secure protection under this Order for such material. If material is appropriately designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” after the material was initially produced, the Receiving Party, on timely notification of the designation, must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

1 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party's
2 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary
3 economic burdens, or a later significant disruption or delay of the litigation, a Party does not
4 waive its right to challenge a confidentiality designation by electing not to mount a challenge
5 promptly after the original designation is disclosed.

6 6.2 Meet and Confer. A Party that elects to initiate a challenge to a
7 Designating Party's confidentiality designation must do so in good faith and must begin the
8 process by conferring directly (including by voice dialogue) with counsel for the Designating
9 Party. In conferring, the challenging Party must explain the basis for its belief that the
10 confidentiality designation was not proper and must give the Designating Party an opportunity to
11 review the designated material, to reconsider the circumstances and, if no change in designation
12 is offered, to explain the basis for the chosen designation. A challenging Party may proceed to
13 the next stage of the challenge process only if it has engaged in this meet and confer process
14 first.

15 6.3 Judicial Intervention. A Party that elects to press a challenge to a
16 confidentiality designation after considering the justification offered by the Designating Party
17 may file and serve a motion that identifies the challenged material and sets forth in detail the
18 basis for the challenge. Each such motion must be accompanied by a competent declaration that
19 affirms that the movant has complied with the meet and confer requirements imposed in the
20 preceding paragraph and that sets forth with specificity the justification for the confidentiality
21 designation that was given by the Designating Party in the meet and confer dialogue.

22 The burden of persuasion in any such challenge proceeding shall be on the Designating
23 Party. Until the Court rules on the challenge, all parties shall continue to afford the material in
24 question the level of protection to which it is entitled under the Producing Party's designation.

25 7. ACCESS TO AND USE OF PROTECTED MATERIAL

26 7.1 Basic Principles. A Receiving Party may use Protected Material that is
27 disclosed or produced by another Party or by a non-party in connection with this case only for
28 prosecuting, defending, or attempting to settle this litigation (Case No. C06-06607). Such

Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the litigation has been terminated, a Receiving Party must comply with the provisions of section 11 below (FINAL DISPOSITION).

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated CONFIDENTIAL only to:

(a) the Receiving Party's Outside Counsel of record in this action, as well as employees of said Counsel to whom it is reasonably necessary to disclose the information for this litigation;

(b) the officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

(c) experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

(d) the Court and its personnel;

(e) court reporters, their staffs, and professional vendors to whom disclosure is reasonably necessary for this litigation;

(f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A) or who have agreed to be bound by the terms of the Order on the record. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order.

(g) the author of the document or the original source of the information.

7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES

1 ONLY” Information or Items. Unless otherwise ordered by the court or permitted in writing by
 2 the Designating Party, a Receiving Party may disclose any information or item designated
 3 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

4 (a) the Receiving Party’s Outside Counsel of record in this action, as well
 5 as employees of said Outside Counsel to whom it is reasonably necessary to disclose the
 6 information for this litigation;

7 (b) Experts (as defined in this Order) (1) to whom disclosure is reasonably
 8 necessary for this litigation, and (2) who have signed the “Agreement to Be Bound by Protective
 9 Order” (Exhibit A) and (3) as to whom the procedures set forth in paragraph 7.4, below, have
 10 been followed;

11 (c) the Court and its personnel;

12 (d) court reporters, their staffs, and professional vendors to whom
 13 disclosure is reasonably necessary for this litigation; and

14 (e) the author of the document or the original source of the information.

15 7.4. PROCEDURES FOR APPROVING DISCLOSURE OF “HIGHLY
 16 CONFIDENTIAL-ATTORNEYS’ EYES ONLY” INFORMATION OR ITEMS TO EXPERTS:

17 (a) Unless otherwise ordered by the court or agreed in writing by the
 18 Designating Party, a Party that seeks to disclose to an “Expert” (as defined in this Order) any
 19 information or item that has been designated “HIGHLY CONFIDENTIAL –ATTORNEYS’
 20 EYES ONLY” first must make a written request to the Designating Party that (1) identifies the
 21 specific information that the Receiving Party seeks permission to disclose to the Expert, (2) sets
 22 forth the full name of the Expert and the city and state or his or her primary residence; (3)
 23 attaches a copy of the Expert’s current resume, (4) identifies the Expert’s current employer(s)
 24 and recent employers, (5) identifies, to the best of the Expert’s reasonable ability, each person or
 25 entity from whom the Expert has received compensation for work in his or her area of expertise
 26 or to whom the Expert has provided professional services at any time during the preceding five
 27 years and (6) identifies (by name, number of the case, filing date and location of court) to the best
 28 of the Expert’s reasonable ability, any litigation in connection with which the Expert has

1 provided any professional services during the preceding five years.

2 (b) A Party that makes a request and provides the information specified in the
3 preceding paragraph may disclose the Protected Material to the identified Expert unless, within
4 seven (7) court days of delivering the request, the Party receives a written objection from the
5 Designating Party. Any such objection must set forth in detail the grounds upon which it is
6 based.

7 (c) A Party that receives a timely written objection must meet and confer with the
8 Designating Party (preferably by or including voice-to-voice dialogue) to try to resolve the
9 matter by agreement. If no agreement is reached, the Party seeking to make the disclosure may
10 file a motion seeking permission from the court to do so. Any such motion must describe the
11 circumstances with specificity, set forth in detail the reasons for which the disclosure to the
12 expert is reasonably necessary, assess the risk of harm that the disclosure would entail and
13 suggest any additional means that might be used to reduce the risk. In addition, any such motion
14 must be accompanied by a competent declaration in which the movant describes the parties'
15 efforts to resolve the matter by agreement (i.e., the extent and the content of the meet and confer
16 discussions) and sets forth the reasons advanced by Designating Party for its refusal to approve
17 the disclosure.

18 In any such proceeding, the Party opposing the disclosure to the Expert shall bear the
19 burden of proving that the risk of harm that the disclosure would entail (under the safeguards
20 proposed) outweighs the Receiving Party's need to disclose the Protected Material to its Expert.

21 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
22 OTHER LITIGATION.

23 If a Receiving Party is served with a subpoena or an order issued in other
24 litigation that would compel disclosure of any information or items designated in this action as
25 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," the
26 Receiving Party must so notify the Designating Party, in writing (by fax or email, if possible)
27 immediately and in no event more than three court days after receiving the subpoena or order.
28 Such notification must include a copy of the subpoena or court order.

1 The Receiving Party also must immediately inform in writing the Party who
2 caused the subpoena or order to issue in the other litigation that some or all the material covered
3 by the subpoena or order is the subject of this Protective Order. In addition, the Receiving Party
4 must deliver a copy of this Stipulated Protective Order promptly to the Party in the other action
5 that caused the subpoena or order to issue.

6 The purpose of imposing these duties is to alert the interested parties to the
7 existence of this Protective Order and to afford the Designating Party in this case an opportunity
8 to try to protect its confidentiality interests in the court from which the subpoena or order issued.
9 The Designating Party shall bear the burdens and the expenses of seeking protection in that court
10 of its confidential material – and nothing in these provisions should be construed as authorizing
11 or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

12 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL. If a
13 Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to
14 any person or in any circumstance not authorized under this Stipulated Protective Order, the
15 Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized
16 disclosures, (b) use its best efforts to retrieve or destroy all copies of the Protected Material, (c)
17 inform the person or persons to whom unauthorized disclosures were made of all the terms of
18 this Order, and (d) request such person or persons to execute the “Acknowledgement and
19 Agreement to Be Bound” that is attached hereto as Exhibit A.

20 10. FILING PROTECTED MATERIAL. Without written permission from the
21 Designating Party or a court order secured after appropriate notice to all interest persons, a Party
22 may not file in the public record in this action any Protected Material. A Party that seeks to file
23 under seal any Protected Material must comply with Civil Local Rule 79-5.

24 11. FINAL DISPOSITION. Unless otherwise ordered or agreed in writing by the
25 Producing Party, within sixty days after the final termination of this action, each Receiving Party
26 must return all Protected Material to the Producing Party. As used in this subdivision, “all
27 Protected Material” includes all copies, abstracts, compilations, summaries or any other form of
28 reproducing or capturing any of the Protected Material. With permission in writing from the

1 Designating Party, the Receiving Party may destroy some or all of the Protected Material instead
2 of returning it. Whether the Protected Material is returned or destroyed, the Receiving Party
3 must submit a written certification to the Producing Party (and, if not the person or entity, to the
4 Designating Party) by the sixty day deadline that identifies (by category where appropriate) all
5 the Protected Material that was returned or destroyed and that affirms that the Receiving Party
6 has not retained any copies, abstracts, compilations, summaries or other forms of reproducing or
7 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to
8 retain an archival copy of all pleadings, motion papers, transcripts, legal memoranda,
9 correspondence or attorney work product, even if such materials contain Protected Material.
10 Any such archival copies that contain or constitute Protected Material remain subject to this
11 Protective Order as set forth in Section 4 (DURATION) above.

12 12. MISCELLANEOUS.

13 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
14 person to seek its modification by the Court in the future.

15 12.2 Right to Assert Other Objections. By stipulating to the entry of this
16 Protective Order, no Party waives any right it otherwise would have to object to disclosing or
17 producing any information or item on any ground not addressed in this Stipulated Protective
18 Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of
19 the material covered by this Protective Order.

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21 IT IS SO STIPULATED THROUGH COUNSEL OF RECORD.
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1 DATED: January 31, 2007

LINER YANKELEVITZ
SUNSHINE & REGENSTREIF LLP

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3
4 By: _____/S/
Angela Agrusa, Esq.
Joshua S Levenberg, Esq.
Attorney for Plaintiff and
Counterdefendant,
UNISOURCE SOLUTIONS, INC.

5
6
7
8 DATED: January 31, 2007

RANDICK O'DEA &
TOOLIATOS LLP

9
10
11 By: _____/S/
Patrick E. Guevara, Esq.
Attorney for Defendant and
Counterclaimant,
UNISOURCE RELOCATION, INC.

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15 IT IS SO ORDERED.

16 Dated: February 27 __, 2007

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MAGISTRATE JUDGE HOWARD F. LLOYD

EXHIBIT A

AGREEMENT TO BE BOUND BY TERMS OF THE PROTECTIVE ORDER

I, _____, state:

I reside at: _____.

I have read the Protective Order dated _____, 2006 ("the Order")
and have been engaged as a _____ on behalf of _____
_____ in preparation and conduct of the litigation entitled
Unisource Solutions, Inc. v. Unisource Relocation, inc., Civil Action No. CV06-06607 JF, in the
United States District Court for the Northern District of California.

I am fully familiar with and agree to comply with and be bound by the provisions of the
Order. I understand that I am to retain all copies of any documents or things designated as
CONFIDENTIAL or HIGHLY CONFIDENTIAL in a secure manner, and that all copies are to
remain in my personal custody until I have completed my assigned duties, whereupon the copies
and any writings prepared by me containing any information designated as CONFIDENTIAL or
HIGHLY CONFIDENTIAL are to be returned to counsel who provided me with such material.

I will not divulge to persons other than those specifically authorized by the Order, and
will not copy or use except solely for the purpose of this action, any information obtained
pursuant to the Order, except as provided in the Order. I also agree to notify any stenographic or
clerical personnel who are required to assist me of the terms of the Order.

I understand that by signing this Agreement, I agree to submit to the personal jurisdiction
of the U.S. District Court for the Northern District of California for the purpose of this action.

I state under penalty of perjury under the laws of the United States of America that the
foregoing is true and correct.

Executed on _____, 200__.
